



State of Wisconsin
Department of Health and Family Services

Jim Doyle, Governor
Helene Nelson, Secretary

Divestment: Annuities and Transfers for the Sole Benefit of the Community Spouse

Change to Base	FY 04		FY 05	
	GPR	All Funds	GPR	All Funds
MA Expenditures	-\$220,700	-\$530,800	-\$221,100	-\$531,700

Description of Proposal

- This proposal seeks to prevent individuals from using annuities to become eligible for Medicaid by treating annuities as a countable asset if there is a market in which the annuity could be sold. If the annuity cannot be sold, its treatment for Medicaid eligibility will be subject to the existing statutes.
- This proposal also implements the following policies to ensure assets transferred to a community spouse are for the sole benefit of the community spouse.
 - ✓ Transfers will be required to be arranged in such a way that no individual except the spouse, disabled child, or disabled individual under the age of 65 can, in any way, benefit from the assets transferred either at the time of the transfer, or at any time in the future.
 - ✓ Assets transferred shall be accomplished via a written instrument of transfer, such as a trust document, which legally binds the parties to a specific course of action and which clearly sets out the conditions under which the transfer was made, as well as who can benefit from the transfer.

Background

- To become eligible for Medicaid, individuals must meet asset and income requirements. Divestment regulations are intended to prevent persons from becoming Medicaid eligible by disposing of resources for less than fair market value.
- A person who has divested assets generally cannot become eligible for Medicaid institutional care or certain other long-term care services for a period of time based on the amount of the divestment.
- Under current law, an individual can transfer assets into an irrevocable annuity or promissory note and this action will not be considered divestment as long as the expected value of the annuity or note is paid within the life expectancy of the annuitant, provides a reasonable return on the annuities principle, and provides for regular and reasonably similar payments over time.
- If a person is below the income limit but not the asset limit, an individual could qualify for Medicaid by selling assets for market value and investing the proceeds in an annuity. In addition, because annuities have a primary beneficiary, when the recipient dies, the annuities go directly to the beneficiary and are not subject to estate recovery.
- Further, when couples are involved and one spouse requires a nursing home level of care, the purchase of an annuity in the name of the spouse not needing care can convert assets to exempt income. Spousal impoverishment rules require that all income of the community spouse be exempt from consideration for the Medicaid eligibility of the spouse in the nursing home or Medicaid community based waiver program. A couple

with \$500,000 in assets could obtain Medicaid eligibility for the institutionalized (waiver) spouse by purchasing a \$500,000 annuity in the name of the community spouse since all income of the community spouse is exempt.

- Currently, assets transferred from the institutionalized spouse are required to be for the sole benefit of the community spouse. However, currently it is hard for the department to determine if transfers are for the sole benefit of the community spouse and it has been reported that such transfers are being exploited to transfer assets for the benefit of persons other than the spouse.

Rationale for Proposal

- Annuities are used to bypass divestment restrictions and gain MA eligibility, especially in the case of couples where spousal impoverishment protections apply.
- Annuities are used to gain MA eligibility for individuals not truly in financial need. It is important, especially in a time of tight budget constraints, that public funding be used to provide assistance to those truly in need.
- Annuities allow a portion of recipient's estates to circumvent estate recovery provisions under Medicaid.
- The guidelines to insure that asset transfers are used solely for the benefit of the community spouse need to be improved to prevent individuals from circumventing divestment restrictions.